STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE EMPLOYEES TRADES COUNCIL, LOCAL 1268, LIUNA, AFL/CIO,	)	
Charging Party,	)	Case No. S-CE-43-S
v.	)	PERB Decision No. 304-S
STATE OF CALIFORNIA (DEPARTMENT OF TRANSPORTATION),	)	April 26, 1983
Respondent.	)	

Appearances: Thomas E. Rankin, Attorney for State Employees Trades Council, Local 1268, LIUNA, AFL-CIO; Richard G. Rypinski, Robert F. Carlson and William M. McMillan, Attorneys for the State of California (Department of Transportation).

Before Tovar, Jaeger and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to the proposed decision of an administrative law judge (ALJ) filed by the State of California, Department of Transportation (Caltrans). The ALJ, ruling on charges filed by the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO (SETC), found that Caltrans had violated subsections 3519(a) and (b) of the State Employer-Employee Relations Act (SEERA) by removing an allegedly defamatory SETC leaflet from state-provided bulletin boards customarily used for posting of employee organization materials. The ALJ dismissed SETC's subsection 3519(d)

allegation, and SETC did not except to that dismissal.[1]

Caltrans excepted on three grounds. First, it excepts to the ALJ's denial of its motion to dismiss the charge, due to SETC's alleged lack of standing to pursue it and the alleged lack of a useful purpose in Board review of the charge. That motion to dismiss was based upon the fact that, after the filing of the charge, SETC was replaced as the exclusive representative of Caltrans employees.

Secondly, Caltrans excepts to the rationale for the ALJ's holding that it violated SEERA by removing the leaflet in question.

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[1]SEERA is codified at Government Code section 3512 et seq. All statutory references are to the Government Code unless otherwise noted. Subsections 3519(a), (b) and (d) provide as follows:

> It shall be unlawful for the state to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> . . . . . .
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Thirdly, Caltrans excepts to the ALJ's proposed remedy on the grounds that it requires an overly-extensive notice posting.

We have reviewed the record as a whole, in light of Caltrans' exceptions. We find that the ALJ's proposed decision, attached hereto and incorporated by reference herein, fully and fairly addresses each of Caltrans[1] contentions, and that it reaches the correct result. We thus adopt the ALJ's decision and rationale as that of the Board itself.[2]

As to the remedy proposed by the ALJ, we find that a statewide posting order is appropriate. In its exceptions Caltrans alleges that the evidence shows that the leaflet was only posted at certain of its locations, and therefore that a statewide posting of PERB's Order would result in confusion on the part of employees who had not been cognizant of the underlying controversy. Our review of the record indicates

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[2]We do not rely for our conclusion on that portion of the ALJ's decision which indicates that the fact that Caltrans left the leaflet posted for two weeks ". . . belies a conclusion that there was posed to the employer a substantial threat to the efficient operation of its plant by the continued display of the poster." The employer need not demonstrate that its operation was actually disrupted to show sufficient business justification for removal of patently offensive or scurrilous material. Rather, its burden is to demonstrate that the material is of the sort that has a necessary tendency to cause disruption and that it is false, defamatory, and otherwise unworthy of EERA protection.

For the other reasons set forth by the ALJ, we conclude that the leaflet in question did not forfeit EERA protection and that Caltrans was not privileged to remove it.

that it does not establish that the leaflet was not posted statewide. Because no such showing was made, we affirm the ALJ's Order providing for statewide posting of the Board's Order.

For the reasons set forth above, we affirm the ALJ's finding that Caltrans violated subsections 3519(a) and (b) by removing an SETC leaflet from state-provided bulletin boards on which employee organization notices are customarily posted. The finding that this same conduct did not violate subsection 3519(d) was not excepted to. Thus, the ALJ's dismissal of that allegation is final and binding upon the parties herein.

ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record in this case, it is hereby ORDERED that the State of California, Department of Transportation and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with employees in their exercise of rights guaranteed by the State Employer-Employee Relations Act, by removing employee organization literature from employer-provided bulletin boards on which such literature is customarily posted;

2. Denying to the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO the right to communicate with its members and constituents as guaranteed by the State

Employer-Employee Relations Act by the conduct described in paragraph 1;

3. Unreasonably restricting by promulgation of written administrative or other policies, the right of the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO to use employer-provided bulletin boards to communicate with its members and constituents.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE SEERA:

1. Within thirty (30) workdays after the date of service of this Decision, post at all work locations where notices to employees customarily are posted, copies of the Notice attached as an appendix hereto signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notices are not altered, reduced in size, defaced or covered with any other material.

2. Within forty-five (45) consecutive workdays from the service of this Decision, notify the Sacramento regional director of the Public Employment Relations Board in writing of what steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

C. The charge that the State of California, Department of Transportation violated subsection 3519(d) of the State Employer-Employee Relations Act is hereby DISMISSED.

Members Jaeger and Tovar joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. S-CE-43-S, in which all parties had the right to participate, it has been found that the State of California, Department of Transportation violated the State Employer-Employee Relations Act by interfering with employees in the exercise of rights guaranteed by the SEERA. It was further found that the State of California, Department of Transportation denied to SETC the right to communicate with its members in violation of the SEERA. As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Interfering with employees in their exercise of rights guaranteed by the State Employer-Employee Relations Act, by removing employee organization literature from employer-provided bulletin boards on which such literature is customarily posted;

2. Denying to the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO the right to communicate with its members and constituents as guaranteed by the State Employer-Employee Relations Act by the conduct described in paragraph 1;

3. Unreasonably restricting, by promulgation of written administrative or other policies, the right of the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO to use employer-provided bulletin boards to communicate with its members and constituents.

Dated:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By _____

THIS IS AN OFFICIAL NOTICE. IT MUST REMAINED POSTED FOR AT LEAST THIRTY (30) WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE DEFACED, ALTERED OR COVERED BY ANY MATERIAL OR REDUCED IN SIZE.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE EMPLOYEES TRADES COUNCIL, LOCAL 1268, LIUNA, AFL/CIO,	)	
Charging Party,	)	Unfair Practice Case No. S-CE-43-S
v.	)	PROPOSED DECISION 2/22/82
STATE OF CALIFORNIA (DEPARTMENT OF TRANSPORTATION),	)	
Respondent.	)	

Appearances: Thomas E. Rankin, Attorney, for State Employees Trades Council, Local 1268, LIUNA, AFL-CIO; William M. McMillan, Attorney, for State of California (Department of Transportation).

Before Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

This case reviews the propriety of the employer's removal from state bulletin boards of a union leaflet, the theme of which lamented the suicide of an employee union member who had been fired from state service.

On February 5, 1981, the State Employees Trades Council, Local 1268, LIUNA, AFL-CIO (hereafter SETC) filed an unfair practice charge against the State of California, Department of Transportation (hereafter Caltrans) alleging violations of Government Code section 3519 (a), (b) and (d) in that Caltrans had removed a SETC leaflet from state provided union bulletin

boards. Caltrans filed a timely answer on February 23, 1981. A settlement conference held on February 27, 1981, was without success and the formal hearing was held on June 18, 1981. Post hearing briefs were filed and the matter submitted on August 10, 1981. On July 27, 1981, Caltrans filed a Motion to Dismiss the charge on the grounds that SETC was not then the exclusive representative of the employees within the unit. The Motion to Dismiss was deferred for disposition within this proposed Decision.

FINDINGS OF FACT

The State (Caltrans) is an employer and SETC is an employee organization within the meaning of the State Employer-Employee Relations Act (hereafter SEERA).[1]

Richard Delsigne was an employee at the Caltrans Placerville maintenance yard. His immediate supervisor was Don Frohreich who was also the superintendent of the Placerville yard. Delsigne was a shop steward for SETC. SETC began representing craft and maintenance employees in the Placerville yard sometime in 1975 or 1976.

Charles Reiter, general manager for SETC, testified that there has been a long history of conflict and of grievances for employees in the Placerville yard. Reiter has been working

[1]Government Code Section 3512 et seq. All references herein are to the Government Code, unless otherwise stated.

with the employees in the Placerville yard since SETC began representing employees there. On one occasion, he represented Delsigne at the first stage of a grievance relating to a one day punitive action for failure to wear a safety hat.

On July 10, 1980, Delsigne was fired from his employment with Caltrans. SETC, representing Delsigne, appealed the dismissal to the State Personnel Board.

Sometime in the second week of December, 1980, SETC posted on state provided union bulletin boards throughout the state a leaflet authored by Reiter.[2] The leaflet is set forth in full:

> PLACERVILLE--On Friday, December 5, 1980, Dick Delsigne put a gun to his head in a run down bar on the wrong side of Sacramento and pulled the trigger. He was dead before the ambulance ever got him to the hospital.
>
> The last words on Delsigne's lips were "those guys aren't going to push me around anymore. . . "
>
> His reference "those guys" was the management of the Caltrans maintenance yard here where Dick Delsigne worked until July 10 when they fired him.
>
> "They" essentially reduces to Don Frohrich, the territorial superintendent who has run things here, after his own fashion, for many years.
>
> To say that Frohrich and Delsigne—an equipment operator with 14 years of service— didn't get along would be an understatement.

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[2]The leaflet was distributed to SETC shop stewards who in turn posted it on bulletin boards at their work locations.

When Frohrich lost his cool and shouted and screamed at his workers, some years ago, management saw that he went off the job for six weeks because of "hypertension".

But when Delsigne failed to wear his hardhat in the yard, he got a days dock for it.

Frohrich spent a lot of his work life attempting to prove that Delsigne was drinking on the job. He never proved it.

But when Delsigne took a picture of Frohrich scarfing it up at the Carriage House here, with his Caltrans car parked in the back, and Frohrich had to get one state worker to drive him home and another state worker had to drive the car back to the yard, Caltrans management said, per usual, "all is in order—don't sweat it."

After the picture taking incident, things here got hot for Delsigne. Dick was used to Frohrich's tactics, of course, like the time they were out with binoculars to spy on the guys. And like the time they went through town checking with restaurant owners to find out if the guys had been screwing off. And like the time. . .

The list is endless. Placerville had come to be known as the pits, and the goal of everyone was to find another place to go to.

Delsigne's problem was that he didn't have it in him to simply bow down and surrender to someone like Frohrich. It challenged his whole sense of dignity as a man.

So he stood up to it and the dirty little game went on, endlessly. Finally, on July 10 they put a bunch of charges together with chewing gum and bobby pins and fired Delsigne.

In the beginning he remained in a fighting mood. But as time passed, the jobless state started to get to him. He'd worked hard all of his life and didn't know what to do with

himself. Also the wife he'd separated from during the bad days was found to have cancer. . . He took to filling his days with booze.

Then last Friday. . .

We in SETC mourn the passing of our brother Richard Delsigne. His life should have ended differently. It didn't.[3]

Reiter testified that the first two paragraphs of the leaflet came from the police report on Delsigne's death and from a person who was in the bar at the time of the event. He admitted that the phrase quoting Delsigne in the leaflet "those guys aren't going to push me around anymore. . ." was not the precise language in the police report, but he thought it was very close. The person who was in the bar at the time of Delsigne's death stated, said Reiter, that Delsigne equated "those guys" with management at Caltrans. Reiter testified that "scarfing" means drinking. Reiter also testified that he got the information about the binoculars and the restaurant check from Delsigne and others. He testified that he had no personal knowledge of any of the specific matters alluded to in the bulletin. As far as he knew, he testified, the matters in the flyer were truthful.

SETC, said Reiter, puts out a bulletin on a regular basis, and that the function of a leaflet is to inform employees of

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[3]The correct spelling of the superintendent's name is Frohreich.

what takes place in State service. One mission of SETC, Reiter said, is to bring changes into the system. SETC believes, said Reiter, the State Personnel Board hearing process is ". . . simply inadequate to real equity, and in the absence of a normal channel equity, this is another way to bring situations and problems to the attention of the workers; have them informed and let them know what's happening."

SETC represented Delsigne in more than one hearing before the State Personnel Board, and in each case the Board denied his appeal of the punitive actions taken against him.

Sometime shortly after the 16th of December, Reiter received a letter from Adriana Gianturco, Director of Transportation. The letter is set forth in full:

> I just had the occasion to read the flyer published by your union concerning the death of Richard Delsigne. I was dismayed and sickened by the total irresponsibility of this article. It occurs to me that the unfortunate circumstances of Mr. Delsigne's death should properly cause us all to respectfully pause and reflect as well as to mourn the passing of a former co-worker. It is not however appropriate or justified to launch an attack against any individual or the management of the Department based upon speculation and inference. To attempt to place the responsibility for Mr. Delsigne's death on any individual represents an abandonment of any sense of responsibility and certainly does not reflect well on your organization.
>
> I believe this unfortunate response on your part only destructively undermines the relationship between this Department and your organization. I deeply regret that you

> felt compelled to write and distribute such material. I have reason to believe that these flyers have been posted at locations in the Department. I expect you to have them removed immediately.

Reiter responded on December 19, to Gianturco's letter as follows:

> I understand your strident response but cannot in all honesty back away from the history of the Placerville situation in general and, more particularly, the role Dick Delsigne was required to play as spelled out in our bulletin.
>
> Certainly all of us would prefer to take a kindly and forgiving posture in situations of such tragic proportion. But a "respective pause. . . to mourn the passage of a fellow co-worker" does nothing to either ameliorate the situation nor to properly mark the passage of a man who had come to believe himself hounded and harassed out of his very livelihood.
>
> Our union has been pursuing problems in Placerville for more than five years. We have done this respectfully and reasonably within the frustrating limitations of an inadequate system, and where did all this reason and respect—not exclusive of our pleading with Caltrans officials to do something about Placerville—lead us? Do we have to be crazed irresponsible radicals to point to that pathetic death in that seedy little bar in Sacramento?
>
> We do not suggest that either Caltrans nor [sic] your Placerville superintendent was responsible for Dick Delsigne's death. If you read this into our flyer, it was not our intent and we apologize.
>
> We do, however, argue that the years of unrelieved conflict ending in Delsigne's termination did contribute to a state of mind in which he ended his life as he did.

> Christ knows that Dick was no saint, but it is my belief and that of the organization that we would have been less than unfeeling brutes to allow his death to pass marked only with the expected niceties.

Later, SETC learned that the leaflet was being removed from the bulletin boards by Caltrans employees. Reiter testified that after SETC's request, a letter, over the signature of Robert Negri, Chief of Employee Relations for the department was sent to SETC. That letter stated:

> This is to advise you that on December 29, 1980 the Department ordered its' supervisors to remove from any Caltrans bulletin boards the SETC flyer, "Hounded Out of State Service, Highway Worker Takes Own Life" regarding the death of Mr. Richard Delsigne.
>
> This action was taken only after your apparent refusal to remove the flyer yourself as Ms. Gianturco requested in her December 16, 1980 letter to you.
>
> We consider those flyers to be grossly irresponsible. In addition, we consider the flyer's content to be defamatory of management in general as well as of Mr. Frohreich, our manager in Placerville. Moreover, we consider your flyer to have damaged both the reputation of management as a whole, as well as having specifically damaged the reputation of Mr. Frohreich.
>
> I also wish to advise you that on December 16, 1980 the Department ordered removed from the SETC bulletin board at Placerville, a "Mouse Cartoon" entitled, "When You're Down & Out, Everybody Wants a Piece". There was a handwritten notation on the cartoon which stated "Please-post-on union-bulletin-board". We ordered this cartoon removed without discussing it with you or any of your representatives because

> it was so blatantly [sic] and grossly obscene and offensive that to have allowed it to remain even for a minute would have been irresponsible on our part.

Negri testified that he considered the final sentence of Gianturco's December 16 letter a demand that SETC remove the Delsigne leaflet. He waited a week following Reiter's December 19 letter and when the flyers had not been removed, he ordered them removed.

Shortly after learning of the posting of the leaflet (mid-December)[4] Negri also learned of a posting of another poster on the bulletin boards that showed several mice, named after sundry Caltrans managers, depicting another mouse named Delsigne, caught in a mousetrap. The managers were depicted as about to engage in the sexual accosting of Delsigne. There is no evidence as to who authored or posted the poster, and SETC makes no charge about its immediate removal as ordered by Negri.

Negri ordered the mouse cartoon removed immediately as he "considered it patently obscene, offensive, vulgar. It shows genitals, it shows animals in the sex act; portrayed as a sex act. I found it offensive."

Negri testified he found the Delsigne flyer to be "offensive, defamatory, irresponsible in its statements, and

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[4]Negri received further reports that the leaflet was posted at Caltrans yards in Placerville, Susanville, Monterey, Salinas, Los Angeles, Walnut Creek and San Francisco.

generally not truthful." It was his interpretation that management and Frohreich in particular, were being charged with responsibility for Delsigne's death. However, Negri testified that he had told Caltrans managers that they were not to touch the flyer, but to leave them where they were. He was going to try to resolve the matter with Reiter.

Negri testified that the action of ordering the removal of the flyer was consistent with the provisions of the Governor's Office guidelines[5] and of

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[5]The Governor's Office of Employee Relation Guidelines, April 1978. The pertinent provisions were:

3. Employee organizations should be allowed to use designated bulletin board space to post notices of their meetings, elections, other business, recreational and social activities and information on issues relating to employee terms and conditions of employment.

4. Management is not required to allow material, which addresses issues other than those cited in 3 above, to be posted. Management may prohibit the posting of the following:

   a. Material which is obscene or defamatory according to current legal standards of material of a lewd or vulgar nature.

   b. Material which advocates employee action(s) that would create a clear and present danger of:

      (1) The commission of unlawful acts on State premises.

      (2) The violation of lawful department regulations.

Caltrans6 relating to material on union bulletin boards.

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(3) The substantial disruption of the orderly operation of State business.

If doubt exists as to the propriety of material in these regards, appropriate qualified personnel should be consulted before removal of material.

5. In the application of the bulletin board posting rules included in these guidelines, it should be noted that management has an interest in protecting the reputation of its employees.

Pursuant to this interest, management should broadly interpret the standards of obscenity and defamation as applied to statements which tend to injure the reputation of an employee.

6. Any denial of approval of material sought to be posted or any removal of material will be subjected to usual grievance procedures. Approval procedures and grievance procedures relative to posting materials should be expedited with respect to the timeliness of material.

. . . . . .

8. If any employee organization material is to be removed from a bulletin board, the employee organization must be contacted as soon as possible. Every effort should be made to effect such contact prior to removal so as to afford the employee organization an opportunity to comment on management's judgment if the representative so desires.

[6]The department provisions (Policy and Procedure No. P75-40) were, in part:

An employee, employee who is an organizational representative, or employee organization:

1. a. Will be provided space on departmental bulletin boards for the placement of items of interest to employees (See Section V, B. 4. for appropriate

ISSUES

The issues in this case are:

1.) Does certification by the Public Employment Relations Board (hereafter PERB) of another employee organization as the exclusive representative in the unit in question, subsequent to the filing of the unfair practice charge, require its dismissal?

2.) Did the Caltrans violate sections 3519(a), (b) or (d)[7] by removing the flyer on December 29, 1980?

> bulletin board items). Employee organizations are responsible for keeping posted materials current and neatly displayed.
>
> b. Management will remove objectionable material it considers obviously offensive (e.g., partisan or non-partisan election campaign material, obscene or highly inflammatory or in exceptionally poor taste). Management should attempt to contact persons responsible for posting materials before removal. Within three (3) days of removal, management will provide written explanation (SPB Rule 544).

[7]Section 3519 provides in part that it shall be unlawful for the state to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> . . . . . .

The Motion to Dismiss.

In its Motion to Dismiss the charge, filed after the formal hearing was completed, the State argues that since the instant unfair practice charge was filed, PERB has certified another employee organization as the exclusive representative of the members of this unit, thus SETC no longer has any authority to pursue this charge.

In response to the Motion, the Administrative Law Judge issued a Notice of Intent to take Official Notice of Records of the PERB relating to the certification of election results and the certification of employee organizations as the exclusive representative of employees within the unit involved in this matter.[8] Time was extended to the parties to file objections to the taking of such notice. No objections were filed.

> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.
>
> . . . . . .

[8]An administrative agency may take official notice of matters within its own files and records. Anderson v. Board of Dental Examiners (1915) 27 Cal.App. 336, 338, 149 p. 1006, 1007; California Administrative Agency Practice (Cont. Ed. Bar 1970) Hearing Procedures, section 3.34, p. 167. Antelope Valley Community College District (7/18/79) PERB Decision No. 97 [3 PERC 10098].

PERB files indicate that on July 10, 1981, the PERB certified the California State Employees Association as the exclusive representative for all employees in the craft and maintenance unit as a result of statewide elections conducted by PERB in May and June of 1981.9

Caltrans posits two cases in support of its Motion to Dismiss.[10] In the first, Mount Diablo Unified School District (12/30/77) PERB Decision No. 44 [2 PERC 2058], the PERB held that a nonexclusive representative did not have a right to pursue a grievance on behalf of a member of a unit where there was an exclusive representative. That is not the case here. The SETC seeks not to pursue a grievance, but, only to ascertain the propriety of the act of the employer in removing the flyer on December 29, 1980.

In the second case cited by Caltrans, Marin Community College District (4/3/81) PERB Decision No. 161 [5 PERC 12041], the PERB declined to review a Administrative Law Judge's dismissal of an unfair practice charge filed by a nonexclusive employee organization alleging the employers' failure to meet and consult with the same employee organization. Subsequent to

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[9]No objections to the certification were filed pursuant to Board regulation section 32738 (title 8, California Administrative Code).

10[10]Both cases involve interpretation of the provisions of the Educational Employment Relations Act (hereafter EERA) Government Code section 3540 et seq.

the Administrative Law Judge's dismissal, the employee organization became the exclusive representative. PERB's affirmation of the dismissal was on the ground that the employer now had a duty to meet and negotiate with the same employee organization and no useful purpose would be served by reviewing the alleged unfair practice. The instant case presents neither a refusal to negotiate question nor the subsequent certification of the same employee organization as the exclusive representative.

In Hanford Joint Union High School District (6/27/78) PERB Decision No. 58 [2 PERC 2137], the PERB held that a nonexclusive representative could not file an unfair practice charge relating to a representation right after an exclusive representative had been selected. The Board relied on the exclusivity of representation granted to the exclusive representative provided in section 3543.1(a).[11] In response to an argument raised by the charging party, PERB noted:

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[11]Section 3543.1(a) provides in part:

> Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. . . .

> The Federation relies on the fact that the employees in the unit did not have an exclusive representative at the time the acts complained of occurred. However, this argument misses the point. The Federation did not assert its rights at that time. This charge was not filed until after another organization had been granted exclusivity. It was this act of accession that constituted the bar to the current action.

Section 3543.1(a) is essentially the same as section 3515.5, as the statutory expression of exclusivity. PERB has held it will apply its precedents under EERA to similar provisions of the SEERA. State of California (Department of Corrections) (5/5/80) PERB Decision No. 127-S [4 PERC 11079].

In the instant case, SETC filed the unfair practice well before certification of the exclusive representative occurred. Indeed, the formal hearing on the unfair practice charge was completed by that date.

At the time of the commission of the alleged violation and at the time the charge was filed, SETC had the statutory right to represent its members within the unit. There was not then an exclusive representative organization. In this case, SETC charges the Caltrans with violating the rights of employees under section 3519(a) and rights of employee organizations rights under section 3519(b). Transgressions of these rights by the employer are not vindicated or mooted by the subsequent certification of another employee organization who will be representing the same employees for whom SETC complains. SETC and the employees are entitled to a determination, on the

merits of the matter, whether the employer violated the provisions of SEERA by its actions of December 29, 1980. The Motion to Dismiss is, on this ground, denied.

The next question to be resolved is whether the removal of the flyer constituted a violation of Government Code section 3519 (a). Section 3519 (a) provides that it shall be unlawful for the state to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

Section 3519 (a) is comparable to section 3543.5 (a) of the EERA.[12]

In Corrections, supra, PERB Decision No. 127-S, PERB read into section 3519(a), in addition to the right of employees to join and participate in an employee organization of their choice,[13] that employee organizations have the right to

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[12]Section 3543.5 (a) provides that it shall be unlawful for a public school employer to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

[13]Section 3515 gives state employees the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer employee relations.

communicate with employees and members at their work site, where they are generally most accessible. Said PERB, "access to employees to facilitate an exchange of information is clearly a threshold concern not only in an organizing campaign but during the course of the ongoing relationship between the employee organization and its members." The PERB observed that even while the SEERA is silent as to the right of access of employee organizations to work areas, institutional bulletin boards and mailboxes for communication purposes, as is provided under the EERA, and the Higher Education Employment Relations Act[14] (hereafter HEERA), such "right of access is implicit within the stated purposes of the SEERA."

In Corrections, supra, PERB Decision No. 127-S, PERB applied the Carlsbad Unified School District[15] test to determine if there was a section 3519(a) violation. Carlsbad established a single standard and test for all alleged violations of section 3543.5(a). PERB held that where there is a nexus between the employer's acts and the exercise of employee rights, a prima facie case is established upon a showing that those acts resulted in some harm to employees' rights. If the employer offers operational necessity in

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[14]Government Code section 3560 et seq.

[15]Oceanside-Carlsbad Unified School District (1/30/79) PERB Decision No. 89 [3 PERC 10031].

explanation of its conduct, the competing interests of the parties are balanced and the issue is resolved accordingly. If the employer's acts are inherently destructive of employee rights, however, those acts can be exonerated only upon a showing that they were the result of circumstances beyond the employer's control and no alternative course of action was available. In any event, the charge will be sustained if unlawful intent is established either affirmatively or by inference from the record.

The question here is not whether the union could use the bulletin board, as the employee organization had access to them, nor is there a question of the employer's control on the distribution of materials during non-work time on the employer's property. Rather the question is whether the employer could place any limit upon the content of material posted on state bulletin boards.

SETC argues that the act of removing the leaflet was inherently destructive of employee rights in that "it deprives the employee of the very basic right to know the opinions of his organization." Thus, under Carlsbad, supra, PERB Decision No. 89, SETC argues, "the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course was available." That the employer could have left the leaflet on the bulletin was an alternative, says SETC, and thus a

violation must be found. This argument is rejected. The act of the employer was to remove a leaflet from state-owned bulletin boards two weeks after its posting, following demand for its removal, and further, following admission by the employee organization that the leaflet might suggest management and Frohreich caused Delsigne's suicide. The act did not cut off the employee's communication with the union or vice versa. There was no restraint, by the employer, of the distribution of the flyer to the rank and file employees.[16] See California Department of Transportation (7/7/81) PERB Decision No. 159b-S [5 PERC 12068]. A different conclusion might be justified where the employer prohibited the distribution of the leaflet, but that is not the case here. It is concluded that the act complained of here, in light of the foregoing circumstances, does not constitute harm "inherently destructive of employee rights".

Here, the removal of a flyer from the state owned bulletin board two weeks after it was posted, denied the employee organization an opportunity to maintain its communication with the unit members via the bulletin board. This involves at least slight harm. The right of the employee organization to communicate this particular message in this fashion will be

[16]There is no evidence that the employer would have precluded general distribution of the leaflet to unit members.

weighed against the operational necessity of the employer, and the competing interest of the parties will be balanced.

In Corrections, supra, PERB Decision No. 127-S, PERB noted the right of the employer under SEERA to place some restriction on access "where necessary to assure the safety of its employees, wards and facilities, and the efficient operation of its official business." "It is clear," said PERB, "that access to public property may be reasonably regulated under varied circumstances." PERB turned to the rules of the National Labor Relations Board and the Federal Courts governing employer regulation of employee organizations access to the employer property. While noting that it would take cognizance of federal precedent,[17] PERB stated it "would consider the

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[17]PERB may use federal labor law precedent where applicable to public sector labor issues. See Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 611, Sweetwater Union High School District 11/23/76) EERB Decision No. 4 (The Public Employment Relation Board was previously known as the Educational Employment Relations Board, or EERB). In State Trial Attorneys Association v. State of California, Department of Transportation (7/7/81) PERB Decision No. 159b-5, PERB addressed the question of access as it relates to the distribution of union literature through the internal mail system of the state. It was noted that "Distribution of literature may involve an intrusion upon the employer's interest in maintaining order and discipline. (Citation omitted.) Further, said PERB, limitation of such distribution also intrudes upon the organizational rights of employees. PERB then balanced these conflicting rights and made a determination of what is reasonable regulation of access under Republic Aviation Corp. v. NLRB (1945) 324 U.S. [16 LRRM 620] where the Supreme Court upheld the Board's ruling that an employer may not prohibit its employees from distributing union organizational literature on non-working time, absent a showing by the employer that a ban is necessary to maintain plant discipline or production.

inherent and substantial distinction between the property interest of the private employer and that of the public employer."

The parties argue for or against justification of Caltrans action on a determination of whether the material was defamatory. Caltrans contends that because the leaflet insinuated Delsigne's suicide was caused by management and Frohreich the material holds them up to contempt and ridicule and "appears defamatory." SETC, on the other hand, argues that the material is not defamatory, because Caltrans never established whether the charges within the leaflet were untrue. Further, says SETC, "under current legal standards" malice is required for a finding of defamation. Here, says SETC, the material was not published with malice, as Reiter believed the allegations to be true, and he had both sources and personal experiences on which the allegation were based.

But establishing the material as defamation as defined by the Supreme Court is not the test of protection under the National Labor Relations Act (hereafter NLRA). The rights of employees and employee organizations to promulgate written materials is grounded upon section 7 of the Act.[18] See

[18]Section 7 provides in part: "Employees shall have the right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Letter Carriers v. Austin (1974) 418 U.S. 264. The National Labor Relations Board does not measure the scope of protection under section 7 by a standard of defamation or its components of malice as prescribed by the Supreme Court for defamation suits in State courts.[19] Rather the Board employs a broader policy to balance the interest of employees in self organization under Section 7 and the right of employers to maintain discipline in their establishment. Republic Aviation Corporation v. NLRB (1945) 324 U.S. 793.

In Maryland Drydock Co. v. NLRB (4th Cir. 1950) 183 F.2d 538, the employee organization was refrained from distributing its newspaper upon the company property. An initial unimpeded union publication contained reference to a competing organization formed for supervisors as "scab" and included an abusive definition of "scab," and in another part of the paper referred to the president of the company as "Gossie" (his name was French) and further that he should be called a vulture. It was found that a subsequent newspaper further lampooned French and held him up to ridicule in doggeral verse as a "goose" and "vulture". The next paper contained a reward for anyone who would submit suitable music for the doggeral verse lampooning French. These papers were barred from distribution by the employer.

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[19]Indeed, even defamatory material may be protected. See Letter Carriers v. Austin (1974) supra.

The Court viewed the material as "scurrilous and defamatory literature" and held that the company could not be held guilty of an unfair practice because it had forbidden the distribution on its premises of "scurrilous and defamatory literature, which holds its officer and supervising officials up to ridicule and contempt, and which has a necessary tendency to disrupt discipline in the plant." The company, said the Court, must maintain order and discipline in its plant, and will not be guilty of an unfair labor practice because its action is reasonably taken to protect the employer's property or "preserve discipline against the unlawful conduct of employees." This case, as noted by Caltrans, was cited with approval in Linn v. United Plant Guard Workers of America, Local 114 (1966) 383 U.S. 53. There, the Supreme Court reviewed publication of leaflets that accused managers of a branch plant of "lying" to and "robbing" members of the unit represented by the union. The Court reversed lower court holdings that such suits were preempted by the federal labor law. Weighing the interest of state courts in affording relief against defamatory statements, and the rights of employees under Section 7 of the NLRA, the Court observed:

> Basic to the right guaranteed to employees in section 7 to form, join or assist labor organizations is the right to engage in

> concerted activities to persuade other employees to join for their mutual aid and protection.
>
> Vigorous exercise of this right 'to persuade other employees to join' must not be stifled by the threat of liability for the over enthusiastic use of rhetoric or the innocent mistake of fact. Thus, the Board has concluded that statements of fact or opinion relevant to a union organizing campaign are protected by section 7 even if they are defamatory and prove to be erroneous, unless made with knowledge of their falsity. (Citation omitted.)

The Supreme Court held that libel suits could be entertained but were limited to those cases where the complainant could show that the defamatory statements were circulated with malice and caused him damage.[1=20] Said the Court:

> Likewise, "in as a number of cases the Board has concluded the epithets such as "scab", "unfair", "liar" are commonplace in these struggles and not so indefensible as to remove them from the protection of section 7, even though the statements are erroneous and defame one of the parties to the dispute. Yet, the Board indicated that its decisions would have been different had the statements been lettered with actual malice, "a deliberate intention to falsify" or "a malevolent desire to injure." In sum, although the board tolerates intemperate, abusive and inaccurate statements made by the

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[20]The Court adopted the standard of New York Times Co. v. Sullivan (1964) 376 U.S. 254, holding consistent with the First and Fourteenth Amendments, that a State cannot award damages to a public official for defamatory falsehood relating to his official conduct unless the official proves actual malice — that the falsehood was published with knowledge of its falsity or with reckless disregard of whether it was true or not.

> union during attempts to organize employees, it does not interpret the Act as giving either party license to injure the other intentionally by circulating defamatory or insulting material known to be false. See Maryland Drydock Co. v Labor Board 183 F.2d 538 (CA 4th Cir. 1950). In such case, the one issuing such material forfeits his protection under the Act.

Thus, material which promotes ridicule and contempt and which has the necessary tendency to disrupt discipline in the plant has no protection. In Drydock, supra, the court said, no protection is afforded for material that is "insulting and defiant and which scurriously lampoons the officers of the company and its supervisory employees."

In Pittsburg Unified School District (2/10/78) PERB Decision No. 47, [2 PERC 2051] the PERB adopted a hearing officer decision that exonerated a school district employer from an alleged section 3543.5 (a) violation for the suspension of employees for the promulgation of flyers suggesting improper conduct on the part of management employees. Besides finding the flyer inappropriate on school grounds around children because it suggested intercourse among the employees, the Administrative Law Judge based his decision on the right of the employer to protect the reputation of its employees from locker room gossip, to avoid lethal effect on the morale of employees involved and the malignment of management employees.

The flyer in question raises questions of management relationships with its employees. It can be read as accusing the state of causing Delsigne's suicide.[21] It begins in captioned letter, "Hounded out of state service, highway worker takes own life." It attributes Delsigne's dying words that management at Caltrans would not be pushing him around anymore. Its chronology of the relationship of Frohreich and Delsigne impute to management generally an overly tolerant acceptance of Frohreich's conduct (the hypertension and the Carriage House incident) while at the same time sanctioning Delsigne for the hard hat incident. It suggests that management condones the use of binoculars to spy on employees and to check with restaurants to see if the employees were "screwing off". It suggests that the list of management tactics were endless, and because of Frohreich and the management, Placerville had become the "pits," and that employees were trying to find somewhere else to go. It suggests that Frohreich and management somehow required Delsigne to subordinate his sense of dignity as a man. It states that management was involved in a dirty little game against Delsigne. Read in its entire context, the leaflet was

[21]That it imputed such a conclusion was recognized by Reiter when he responded to Gianturco. He apologized to the agency for such an inference.

disparaging of management in general and Frohreich in particular. Contrary to Reiters testimony, the leaflet makes no reference to the State Personnel Board, nor to the asserted "inequalities" of its proceedings. The leaflet was posted before the State Personnel Board had taken action on the Administrative Law Judge decision.

On the other hand, the assertions in the leaflet are not sheer fabrications. Reiter was familiar with the Placerville scene with the employer-employee relations there. Reiter had received confirmation from a person present at the scene to corroborate the police report on Delsigne's statement before he died. Caltrans offered nothing at the hearing to disprove anything stated in the leaflet.

As noted, the issue here is not the freedom of the employees to publish and distribute material, but rather the obligation of the employer to allow the material to remain posted upon the state-owned bulletin board. While any degree of condonation by the state of the content of the material allowed to be posted for any length of time would be speculative, the State does have an interest in assuring that management and its employees are free from personal attack. Thus, from the foregoing analysis, it could be argued that allowing this leaflet to remain at the Placerville yard would expose Frohreich and management to continued disparaging gossip about their role in Delsigne's suicide.

This concern, however, did not cause the Caltrans to take immediate action to remove the flyer. Rather, Caltrans chose to allow the flyer to remain posted. While Gianturco's letter of December 16 expressed concern for the contents of the leaflet, her reaction was simply to request the Union take the leaflet down. Had continued efficiency of the plant operations been in issue, she would have ordered it taken down, under the auspices of the operative guidelines.[22] Even after Reiter disclaimed removal of the flyer, Negri did not take the leaflet down and, in fact, told management employees to leave the leaflet posted. This action belies a conclusion that there was posed to the employer a substantial threat to the efficient operation of its plant by the continued display of the poster.

Further, no evidence was offered at the hearing about such threat to the operation of the plant. Caltran's post-hearing brief offers no factual or legal contentions that such threat was present because of the presence of the leaflet.

It is concluded therefore, that Caltrans has failed to establish operational necessity as justification for its conduct. Thus, under the Carlsbad test, a violation of 3519 (a) must be found.

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[22]See Rule C (1)(b) of the Policy and Procedure set forth in footnote 6.

This denial of the right to communicate with employees is concurrently a violation of the employee organizations rights under 3519 (b), See California Department of Transportation supra, PERB Decision No. 159b-S.

Charging party questions the reasonableness of the policies in terms of employees' rights of free speech, citing Richmond Federation of Teachers and Simi Valley Educators Association (8/1/79) PERB Decision No. 99 [3 PERC 10105]. Charging party argues that the Caltrans policy is overbroad in that it allows management to remove "objectionable material it considers obviously offensive." This unbridled discretion would, according to SETC, fall under the Richmond case.

In Richmond Unified School District (8/1/79), supra, PERB Decision No. 99 [3 PERC 10105] where reviewing the scope of regulation making powers of school districts under section 3543.1(b) of the EERA the PERB noted:

> On the basis of our understanding of the statutory purposes of EERA, in conjunction with our review of analogous principles of labor and constitutional law, we conclude that school employer regulation under section 3543.1(b) should be narrowly drawn to cover the time, place and manner of the activity, without impinging on the content unless it presents a substantial threat to peaceful school operations. The employer's interest in regulating speech conduct on campus is fully protected, under section 3543.1 (b) , by narrow guidelines and by the deterrent threat posed by the possibility of subsequent punishment for unprotected behavior. Pittsburg Unified School District (2/10/78) PERB Decision No. 47.

The Board found as one of the reasons the regulations violated the EERA were that they were unreasonably vague and overbroad. Within this criticism was the notion that the policies in question suffered from the absence of clear standards and procedures, thereby leaving unfettered the discretion of school administrators. Under the Governor's Office guidelines, management is encouraged to "broadly interpret the standards of obscenity or defamation" according to "current legal standards or material of a lewd or vulgar nature," as applied to statements "which tend to injure the reputation of an employee."

In the instant case, Negri saw fit to remove the mouse cartoon immediately. His exercise of discretion with regard to the Delsigne flyer, however, was less firm. He chose to allow the flyer to be posted for two weeks. Had he felt certain that an employee's reputation was being injured he would have removed the material immediately. Rather, he left it on the bulletin board, notwithstanding his contention that the policies authorized him to remove it. This sort of discretion would be suspect under the Richmond, supra, PERB Decision No. 99, holding.[23]

[23]In addition, in Richmond, the Board condemned language referring to "of political or partisan nature," language quite similar to that found in the Caltrans policy and procedure manual, "partisan or non-partisan election campaign material."

Likewise, in Richmond, supra, the Board found the district failing to follow its own guidelines in the application of the rules to the use of the school mail systems. Here too, had Gianturco or Negri felt that the material in question was injurious to an employee, the material should have been removed immediately, not allowed to remain for two weeks. Indeed, as noted, Negri told some managers to leave the material posted.

While the Governor's Office guidelines do provide for review, through grievance procedures of either disapproved material or material removed, a feature observed by the PERB as absent in the Richmond regulations, such procedure does not overcome the initial uncertainty of application of the guidelines because of their scope.

The Governor's Office guidelines authorize removal of material "obscene or defamatory according to current legal standards of material of a lewd or vulgar nature." Management is to "broadly interpret standards of obscenity and defamation as applied to statements which tend to injure the reputation of employees." Under the Caltrans Policy and Procedure, management is to remove "objectionable material" it considers "obviously offensive (obscene or highly inflammatory in or in exceptionally poor taste)."

The material in the Delsigne flyer was not lewd in the sense of the mouse cartoon. Negri had that cartoon removed immediately. Nor did Negri perceive the Delsigne flyer as

vulgar. His written notice to SETC on December 29 did not complain of vulgarity nor did he express such an impression at the hearing. His written response to SETC complained that the leaflet was "defamatory" to "management in general," and yet the guidelines address themselves to the reputation of employees and not "management" generally.

These guidelines fail to comply with the standard set down by the PERB in Richmond, supra, PERB Decision No. 99, in that they impinge upon the content of the activity without reference to the impact, if any, upon peaceful operations of the business operations. Enforcement of such guidelines against the activities of employee organizations under 3519 (b) are a denial of those rights and hence, a violation.

The Caltrans contends the Administrative Law Judge should take official notice of the State Personnel Board's decision relating to the discharge of Delsigne. This finding, if made, would then counter the charge in the leaflet that they (the state) "put together some chewing gum and bobby pins and fired him". Even if one were to take judicial notice of the Board's decision, however, such notice would not overcome the breadth of freedom given employee organizations in their publications. This single statement is mere hyperbole. As the foregoing discussion has revealed, inaccuracies and exaggerations are not rendered unprotected by the Act, see Pioneer Finishing Corporation v. NLRB (1st Cir 1981) No. 81-1038____F.2d_____,

it is only when the statements are made maliciously and are untrue, or with reckless disregard for the truth or falsity. Here, at the time the flyer was released, following Delsigne's death, the SETC was of the opinion that Caltrans was wrong in firing him. That the Administrative Law Judge and/or the State Personnel Board felt differently, did not convert SETC's characterization of "chewing gum and bobby pins" into an abject false statement. It is unnecessary, therefore, to take official notice of the State Personnel Board decision.

Caltrans argues that SETC maintained the flyer on the bulletin board and that Reiter responded to Gianturco's letter of December 16 knowing the position of the SPB. There is no evidence, however, to show that Reiter had any knowledge of the action of the State Personnel Board which was issued in December 18, 1980.

Charging party has also alleged a violation of section 3519(d). Under that section it is unlawful for the State to dominate or interfere with the formation or administration of any employee organizations, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Charging Party complains that the violation occurred in that removal of the bulletin deprived the organization its regular means of communicating with state workers. In State of California, Department of Transportation, supra, PERB Decision

No. 159b-S, it was held that denial of use of state mail systems did not constitute domination or interference with the formation or administration of any employee organization. In this case, one flyer was removed from the bulletin board, and this followed by two weeks the employer's demand for its removal. If denial of use of the state mail system is not a violation of 3519 (d) then the removal of one flyer from a bulletin board cannot constitute domination or interference. The record in this case is further barren of any evidence that the State encouraged employees to join one organization in preference to another. Accordingly, the SETC has failed to support its allegations that Caltrans violated section 3519 (d).

In summary, it is concluded that the State did violate sections 3519 (a) and (b) but not subsection 3519 (d) by removing the flyer on December 29, 1980.

REMEDY

Section 3514.5 empowers PERB to:

> . . . . . .
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> . . . to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.
>
> . . . . . .

It has been found that the State, by removing the flyer relating to Delsigne, violated sections 3519 (a) and (b). It has been further found that the employer violated section 3519 (b) by enforcement of the Governor's Office guidelines and Caltrans Policy and Procedures No. 75-40. It will effectuate the policies of SEERA to order the employer to cease and desist from interfering with the rights of employees or of employee organizations guaranteed by the SEERA.

SETC request that the employer be required to repost the bulletin along with a notice that it violated the Act. However, requiring Caltrans to post the flyer serves no useful purpose at this time. Delsigne's unfortunate death has occurred, now more than a year ago. Reviving SETC's lamentation of his passing does nothing to further the policies of the Act. SETC is no longer a competing employee organization for exclusive representation.[24] The re-publication of the flyer will in no way benefit SETC at this time. The request for reposting the flyer is therefore denied. It has been found that SETC failed to support its allegations of a section 3519 (d) violation, accordingly, that part of the charge should be dismissed.

It is also appropriate that the State be required to post a notice incorporating the terms of the order. The notice should

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[24]See the discussion on page 13 relating to the Motion to Dismiss.

be subscribed by an authorized agent of the State indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting will provide employees with notice that the State has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and announces the State's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69. In Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 587, the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

The employer's Motion to Dismiss should be denied.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 3541.5, it is hereby ordered that the State of California, Department of Transportation and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with employees because of the exercise of rights guaranteed by the State Employer Employee Relations Act,

2. Denying to the State Employee Trades Council, Local 1268, LIUNA, AFL-CIO, rights guaranteed by the State Employer Employee Relations Act including the right to communicate to its members.

3. Unreasonably denying by their written administrative or other policies the right of employee organizations pursuant to the SEERA to use bulletin boards for the purpose of communicating with employees of Caltrans.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE STATE EMPLOYER EMPLOYEE RELATIONS ACT:

1. Within five (5) workdays after the date of service of a final decision in this matter, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, signed by a authorized agent of the employer. Such posting shall be maintained for at least thirty (30) workdays at all work locations where notices to employees customarily are placed. Such notice must not be reduced in size and reasonable steps shall be taken to ensure that they are not defaced, altered or covered by any material;

2. Within twenty (20) workdays from service of the final decision herein, notify the Sacramento Regional Director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this ORDER. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the

regional director shall be served concurrently on the charging party herein.

C. The allegation that Caltrans violated section 3519 (d) is DISMISSED.

D. Caltran's Motion to Dismiss is DENIED

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on March 15, 1982, unless a party files a timely statement of exceptions within twenty (20) calendar days following the date of service of the decision. The statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on March 15 1982___, in order to be timely filed. (See California Administrative Code, title 8, part III, section 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. (See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.)

Dated: February 22, 1982

Gary M. Gallery
Administrative Law Judge